

*Alterra Am. Ins. Co. v. National Football League, et al.*, Index No. 652813/2012

*Discover Prop. & Cas. Co., et al. v. National Football League, et al.*, Index No. 652933/2012

## **EXHIBIT A**

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK:

3 -----x  
4 ALTERRA AMERICA INSURANCE CO.,

Index:  
652813/12E

5 Plaintiff,

6 -against-

7 NATIONAL FOOTBALL LEAGUE, et al.

8 Defendant.

9 -----x  
10 DISCOVER PROPERTY & CASUALTY COMPANY, et al.,

11 Plaintiff,

Index:  
652933/12

12 -against-

13 NATIONAL FOOTBALL LEAGUE, et al.,

14 -----x  
15 60 Centre Street  
16 New York, New York 10007  
17 April 29, 2019

18 B E F O R E:

19 HONORABLE ANDREA MASLEY, Justice

20 A P P E A R A N C E S:

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- Proceedings Continue Next Page -

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Tal R. Hahn,  
Senior Court Reporter

## Proceedings

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1 the typical things that --

2 THE COURT: I don't think I have burden and  
3 harassment in here. But I do have -- I do have, you  
4 know, a large unwieldy case that I'd like to find a way  
5 to organize it.

6 MR. CARROLL: I understand that, your Honor.

7 THE COURT: But that is all on consent.  
8 It's not -- I don't think you have what you need to get  
9 a TRO. That is for sure. But we should be able to  
10 work something out.

11 MR. CARROLL: Your Honor, I presume your  
12 Honor will set a briefing schedule on the preliminary  
13 injunction aspect of it. We could continue to confer  
14 in the interim, and we will. And if something works  
15 out, obviously we will report back to your Honor. But  
16 from a TRO perspective, we just don't see it.

17 THE COURT: Right. What if the nonparty  
18 teams were to produce the documents to which they have  
19 no objection?

20 MR. CARROLL: That would be a fantastic start  
21 to a process that might be something that we could then  
22 work out, your Honor.

23 THE COURT: I can't help but feel that --  
24 that you are using this iss ue to bring all the teams  
25 before Dolinger. Why not just produce the documents

## Proceedings

1 which you don't object to? Why not do that now?

2 MR. SCHAFER: We want to do that.

3 THE COURT: They will take them.

4 MR. SCHAFER: We have to have an agreement  
5 on what the search terms are and who the custodians  
6 are. And they refused to agree to that. That was part  
7 of our proposal. We said we will by May 10th -- we  
8 gave them a specific date. We said by May 10 on every  
9 one of these thirty-two we will give you the custodians  
10 and accept the search terms that Judge Dolinger agreed  
11 to in his eighty-one page ruling, and if there is  
12 anything, you know, other than that that is specific to  
13 the clubs, we will talk to you about that.

14 So we have said that. And if I may, your  
15 Honor, and I do this with some trepidation because your  
16 Honor has already said that you don't think you have  
17 sufficient annoyance, burden, prejudice, et cetera, and  
18 I -- with all due respect I really do think that you  
19 do. And if you look at the cases, particularly the  
20 Federal cases that talk about this because it happens  
21 all the time, the possibility of subjecting parties to  
22 inconsistent adjudications and discovery obligations,  
23 especially when they are nonparties is the poster child  
24 of what this type of motion is about, and what this  
25 statute is intended to do.

## Proceedings

1 to each other and respectful? So I appreciate that.  
2 And it means a lot to me in all of my three hundred  
3 fifty cases that the parties treat each other this way.  
4 But here we are.

5 So, if the plaintiffs would agree to -- these  
6 are the search terms that you have proposed to the  
7 nonparties? They have that?

8 MR. SIMPSON: Your Honor, we did propose  
9 search terms six months ago and we didn't make any  
10 progress with them. I get it, we are not talking about  
11 the past. But I just want to add that Mr. Schafler has  
12 more recently proposed using the search terms from  
13 Judge Dolinger's opinion. The majority of those are  
14 applicable here, but because the teams have specific  
15 players we believe there would be a few more team  
16 specific that would have to be added.

17 THE COURT: So what about agreeing to the  
18 general -- step one; general. We will do the specific  
19 players separately, or you could make up a list, a  
20 supplemental list of particular players. But for now  
21 they do a search using Dolinger's terms.

22 MS. SIMPSON: I think that would be a great  
23 first step. I think one thing we would also need to  
24 clarify with them is location of searches. Obviously  
25 our subpoenas go well beyond ESIs and e-mails and

## Proceedings

1 things like that. If they have hard copy files, if  
2 they have old databases, we would need to work around  
3 the parameters. I think that it would be a very good  
4 step.

5 MR. CARROLL: Your Honor, if we could do that  
6 and get them to produce their documents in the next  
7 thirty days, I would be prepared to recommend to my  
8 colleagues that we stand down for thirty days.

9 MR. SCHAFLEER: Better than where we are right  
10 now, your Honor. We will be happy to proceed on that  
11 basis.

12 THE COURT: So you would begin with the  
13 Dolinger terms and produce the documents immediately,  
14 to which there are no objections. And then plaintiffs  
15 will provide you with a list of specific per team,  
16 right? Regarding specific players.

17 They are not seeking -- just to be clear, you  
18 are not seeking privilege HIPA --

19 MR. CARROLL: That's correct.

20 THE COURT: -- issues. So that is --

21 MR. SCHAFLEER: That was not clear to me  
22 before but I am happy to hear that.

23 MR. CARROLL: With the understanding, your  
24 Honor, that if need be, we could then come back to your  
25 Honor in thirty days and revisit where we are?

## Proceedings

1 THE COURT: The privilege and the HIPA?

2 MR. CARROLL: No. No. The production and  
3 where we are in connection with the rest of whether we  
4 will have to do something else on the Order to Show  
5 Cause. If, for example, they produce five documents we  
6 will have issues and concerns and problems. We will  
7 need to address whether we are going to proceed in  
8 other jurisdictions. We are standing down for now but  
9 not giving up the right to proceed in those other  
10 jurisdictions. If we feel we need to, and if your  
11 Honor ultimately rejects the Order to Show Cause. But  
12 that's a fight for a different day.

13 THE COURT: Well, I wouldn't be able to  
14 determine that anyway.

15 MR. CARROLL: Understood.

16 THE COURT: Until I get arguments from both  
17 sides and give you an opportunity to reply to their  
18 papers anyway. If we could avoid all of that, that  
19 would be much better.

20 MR. CARROLL: Understood, your Honor.

21 THE COURT: Okay. Let's talk about dates.

22 So you basically put together your  
23 opposition, right?

24 MR. CARROLL: Yes, your Honor.

25 THE COURT: So we are only talking about a



## Proceedings

1 make maximal efforts with every one of these thirty-two  
2 teams.

3 THE COURT: So May 13th you could do that?

4 MR. SCHAFER: To begin production?

5 THE COURT: To make the production consistent  
6 with the Dolinger terms.

7 MR. HOLINSTAT: Your Honor, we will certainly  
8 get the custodian to run the searches. In terms of how  
9 the documents could be done, we would offer rolling  
10 production. If it's ten million documents versus five  
11 thousand, it just depends on how many documents there  
12 are. We offered this before to do this on a rolling  
13 basis --

14 THE COURT: See, the problem I have with a  
15 rolling basis is if you would just produce the  
16 documents to which there is no objection, the rolling  
17 basis meaning you have to review the ten thousand or --

18 MR. HOLINSTAT: Yes, your Honor.

19 THE COURT: And you will roll it as you  
20 review them?

21 MR. HOLINSTAT: Yes, your Honor. And the  
22 idea is we have to search for privilege anyway to take  
23 it out and we would continue to produce them as they  
24 come out.

25 MR. CARROLL: Your Honor, to make it easy,

Proceedings

1 MR. CARROLL: Thank you, Judge.

2 MR. DOLIN: Thank you, your Honor.

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5 Certified to be a true and accurate  
6 transcript of the stenographic minutes taken within.

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8 Tal R. Hahn,  
9 Senior Court Reporter

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